



Determining the Best Interests of the Child

Courts make a variety of decisions that affect children, including placement and custody determinations, safety and permanency planning, and proceedings for termination of parental rights. Whenever a court makes such a determination, it must weigh whether its decision will be in the “best interests” of the child.

All States, the District of Columbia, American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands have statutes requiring that the child’s best interests be considered whenever specified types of decisions are made regarding a child’s custody, placement, or other critical life issues.

Electronic copies of this publication may be downloaded at

www.childwelfare.gov/systemwide/laws_policies/statutes/best_interest.cfm

To find statute information for a particular State, go to

www.childwelfare.gov/systemwide/laws_policies/state/index.cfm

To find information on all the States and territories, order a copy of the full-length PDF by calling 800.394.3366 or 703.385.7565, or download it at www.childwelfare.gov/systemwide/laws_policies/statutes/best_interestall.pdf



Best Interests Definition

Although there is no standard definition of “best interests of the child,” the term generally refers to the deliberation that courts undertake when deciding what type of services, actions, and orders will best serve a child as well as who is best suited to take care of a child. “Best interests” determinations are generally made by considering a number of factors related to the circumstances of the child and the circumstances and capacity of the child’s potential caregiver(s), with the child’s ultimate safety and well-being as the paramount concern.

Guiding Principles of Best Interests Determinations

State statutes frequently reference over arching goals, purposes, and/or objectives that shape the analysis in making best interests determinations. The following are among the most frequently stated guiding principles:

- The importance of family integrity and preference for avoiding removal of the child from his/her home (approximately 21 States, American Samoa, Guam, Puerto Rico, and the U.S. Virgin Islands)¹
- The health, safety, and/or protection of the child (16 States and the Northern Mariana Islands)²
- The importance of timely permanency decisions (13 States and the U.S. Virgin Islands)³
- The assurance that a child removed from his/her home will be given care, treatment, and guidance that will assist the child in developing into a self-sufficient adult (4 States and American Samoa)⁴

¹ In Alabama, Alaska, California, Colorado, Georgia, Idaho, Indiana, Kansas, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Mexico, New York, Pennsylvania, South Carolina, Utah, Washington, West Virginia, and Wyoming. The word approximately is used to stress the fact that States frequently amend their laws. This information is current as of April 2008.

² In Arizona, Arkansas, Idaho, Kansas, Louisiana, Massachusetts, Nebraska, New Hampshire, New Jersey, New Mexico, North Carolina, Oklahoma, Pennsylvania, Washington, West Virginia, and Wyoming.

³ In Alabama, Alaska, California, Hawaii, Idaho, Iowa, Kansas, Nebraska, New Mexico, New York, South Carolina, Washington, and West Virginia.

⁴ In Alabama, Colorado, Georgia, and Mississippi.

Best Interests Factors

Approximately 16 States and the District of Columbia list in their statutes specific factors for courts to consider in making determinations regarding the best interests of the child.⁵ While the factors vary considerably from State to State, some factors commonly required include:

- The emotional ties and relationship between the child and his or her parents, siblings, family and household members, or other caregivers⁶
- The capacity of the parents to provide a safe home and adequate food, clothing, and medical care⁷
- The mental and physical health needs of the child⁸
- The mental and physical health of the parents⁹
- The presence of domestic violence in the home¹⁰

In six of these States and the District of Columbia, all the factors listed in the statute must be considered.¹¹ For example, Illinois law provides a list of the factors that, within the context of the child's age and developmental needs, "shall be considered" in determining best interests. Similarly, the District of Columbia requires that courts consider each factor listed in its best interests statute in making such decisions. In the remainder of the States whose statutes list best interests factors, courts making best interests determinations are directed to consider all relevant factors, not only those specifically listed in the statute.¹²

Three States also list factor(s) that should not be considered in the best interests analysis. For example, Connecticut law states that the determination of the best interests of the child shall not be based on the consideration of the socioeconomic status

⁵ Connecticut, Delaware, Florida, Illinois, Kentucky, Maryland, Massachusetts, Michigan, North Dakota, Ohio, Oregon, Tennessee, Texas, Vermont, Virginia, and Wisconsin.

⁶ In Connecticut, Delaware, Florida, Illinois, Maryland, Massachusetts, Michigan, North Dakota, Ohio, Oregon, Tennessee, Vermont, Virginia, and the District of Columbia.

⁷ In Florida, Illinois, Maryland, Michigan, North Dakota, Texas, Vermont, and Wisconsin.

⁸ In Connecticut, Delaware, Florida, Michigan, Virginia, and the District of Columbia.

⁹ In Delaware, Kentucky, Michigan, North Dakota, Texas, Virginia, and the District of Columbia.

¹⁰ In Delaware, Kentucky, Michigan, North Dakota, Oregon, Tennessee, Texas, and Virginia.

¹¹ Illinois, Maryland, Michigan, Oregon, Vermont, and Virginia.

¹² Connecticut, Delaware, Florida, Massachusetts, North Dakota, Ohio, Tennessee, and Wisconsin.

of the birth parent or caregiver. Delaware prohibits courts from assuming that one parent, because of his or her sex, is better qualified than the other parent to act as a custodian or primary residential parent. Idaho does not permit discrimination on the basis of the parent's disability.

Statutes in the remaining States, American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands provide more general guidance and give more discretion to the courts to make best interests determinations.¹³ Under Alabama law, for example, courts are provided with a set of goals to "facilitate the care, protection, and discipline of children" who come within their jurisdiction. South Dakota law vests the court with discretion to determine "the suitable disposition of a child according to the least restrictive alternative available in keeping with the child's best interests and with due regard to the rights and interests of the parents, guardian, custodian, the public, and the State."

Other factors that courts commonly take into consideration in making best interests determinations include the following:

- **Federal and/or State Constitutional protections.** For example, New Hampshire law provides that its processes related to reports of child abuse or neglect are to be carried out within a judicial framework that recognizes and enforces the constitutional and other rights of the parties involved. Pennsylvania's statute states that it shall be interpreted so as to provide a means through which parties are afforded a fair hearing and assured the recognition of their constitutional and legal rights.¹⁴
- **The importance of maintaining sibling and other close family bonds.** For example, Alaska law notes the importance of frequent, regular, and reasonable visitation with parents and family members when a child has been removed from

¹³ In Alabama, Alaska, Arizona, Arkansas, California, Colorado, Georgia, Hawaii, Indiana, Iowa, Kansas, Louisiana, Maine, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Utah, Washington, West Virginia, and Wyoming.

¹⁴ Other States that address the issue of parent and/or child rights within their best interests statutes include Missouri, Montana, New Mexico, New York, Oklahoma, South Dakota, Tennessee, Washington, West Virginia, and Puerto Rico.

the home. Florida considers the love, affection, and other emotional ties between the child and his or her parents, siblings, and other relatives to be important in determining the manifest interests of the child.¹⁵

- **The child's wishes.** Approximately 11 States and the District of Columbia require courts to consider the child's wishes when making a determination of best interests.¹⁶ In making this determination, the court will consider whether the child is of an age and level of maturity to express a reasonable preference.

This publication is a product of the State Statutes Series prepared by Child Welfare Information Gateway in cooperation with the National Center for Adoption Law and Policy. While every attempt has been made to be complete, additional information on these topics may be in other sections of a State's code as well as in agency regulations, case law, and informal practices and procedures.

¹⁵ Other States that address the importance of maintaining family and sibling relationships include California, Colorado, Connecticut, Illinois, Kansas, Maryland, Minnesota, Missouri, Montana, New Hampshire, Ohio, Oregon, Pennsylvania, Vermont, Virginia, West Virginia, and Wisconsin, as well as the District of Columbia and the U.S. Virgin Islands.

¹⁶ Delaware, Florida, Illinois, Maine (when the child is age 12 or older), Massachusetts (when the child is age 12 or older), Michigan, North Dakota, Ohio, Rhode Island, Virginia, and Wisconsin.